

BUSINESS LAW

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LECTURE 1 # Introduction to Law and Its Branches

Law plays a pivotal role in business as it establishes the rules that all entities must follow. It creates a predictable and structured environment in which businesses can operate, grow, and contribute to the economy. In Thailand, as in many other jurisdictions, law is generally divided into two primary branches: civil law and criminal law.

Civil Law: The Framework for Private Rights

Civil law, known in Thailand as private law, is concerned with the rights and duties between individuals or legal entities. The main objective of civil law is to offer remedies to individuals who have suffered due to the wrongful actions of others. In a business context, civil law covers a wide array of areas including:

- ***Contracts***: Legal agreements that bind parties to their duties and responsibilities.
- ***Property***: Rules regarding the ownership and use of property.
- ***Torts***: Civil wrongs that cause harm or loss, leading to legal liability.
- ***Commercial Law***: Governing business and commercial transactions.
- ***Company Law***: Dealing with the creation and operation of companies.

Civil Law in Thailand

Thai civil law is largely influenced by the civil law traditions of Europe, particularly the Germanic system. Thailand's Civil and Commercial Code provides a comprehensive framework covering matters such as contracts, wrongful acts, property, family, and inheritance. In the business realm, the Code outlines the procedures for forming companies, managing business transactions, and handling disputes.

Criminal Law: The State's Role in Public Order

Criminal law, or public law, involves the regulation and enforcement of rights on behalf of society. It is the state's mechanism to prevent harm to society by setting out offenses and prescribing punishments. Violations that fall under criminal law include:

- ***Murder***
- ***Theft***
- ***Fraud***
- ***Corruption***
- ***Drug offenses***

Criminal law serves a dual purpose: it aims to deter potential offenders through the threat of punishment and rehabilitate those who have already committed offenses.

Criminal Law in Thailand

In Thailand, the Penal Code outlines various offenses against the state, person, property, and public safety, among others. Criminal law also intersects with business in the form of white-collar crimes such as embezzlement, insider trading, and bribery. The state prosecutes these offenses to uphold trust and integrity in the marketplace.

Key Differences Between Civil Law and Criminal Law

Basis of Claims

- ***Civil Law***: Claims are usually brought by individuals or entities seeking to enforce rights or seek remedies for breaches of duty.
- ***Criminal Law***: The state brings charges against individuals or entities that have breached societal norms as codified in law.

Legal Proceedings

- ***Civil Law***: The plaintiff sues the defendant, and the proceedings are typically less formal than criminal trials. The outcome often involves compensation or other remedies.
- ***Criminal Law***: Prosecution by the state requires a higher standard of proof due to the potential for more severe penalties.

Standards of Proof

- ***Civil Law***: The burden of proof is "preponderance of the evidence," meaning the claim must be more likely to be true than not.
- ***Criminal Law***: The standard is "beyond a reasonable doubt," which is a higher threshold, reflecting the serious nature of criminal penalties.

Consequences

- ***Civil Law***: Remedies usually involve monetary compensation or specific performance (an order to fulfill a contractual agreement).
- ***Criminal Law***: Penalties can include fines, imprisonment, or both.

Act Governing Offenses Arising from the Use of Checks B.E. 2534 (1991)

According to recent statistics from the Bank of Thailand, there are more than 20 million checks returned for insufficient funds each year in Thailand. This is an extraordinary number in a country of approximately 66 million people, equating to nearly one returned check for every three people. Given these numbers, there is a strong possibility that those doing business in Thailand will, at some point in time, be confronted with a bank refusing to honor a check due to insufficient funds. It is therefore important to understand a party's rights and potential liabilities under Thailand's bad check laws.

When it comes to bad check legislation, Thailand is unique. In addition to civil remedies available under the Civil and Commercial Code against those who pass bad checks, Thailand is one of the few jurisdictions in the world in which there can also extend criminal liability. Criminal liability is evaluated under the Act Governing Offenses Arising from the Use of Checks B.E. 2534 (1991) (the Act). Under the Act, a criminal conviction may give rise to imprisonment of up to one year and/or a fine of up to THB 60,000. Needless to say, the potential for such criminal punishment can have a significant impact on business and personal freedoms, a point that has led to considerable debate on the need for such laws.

Statutory Prerequisites

To provide context for this debate, it is helpful to first review the statutory prerequisites for filing a criminal claim under the Act. Assuming there has been a check returned for insufficient funds, the aggrieved person (payee) has the right to file criminal charges if three prerequisites are satisfied. These are as follows:

1. The drawer issued the check for settlement of an existing debt or obligation.
2. The debt or obligation is enforceable under Thai law.
3. The drawer had a dishonest intent as described or implied by any one of the following:
 - 3.1 The drawer acted with the intention that no payment be made to the recipient under the check;
 - 3.2 At the time of check issuance, there were no funds in the checking account for payment to the recipient;
 - 3.3 The drawer ordered payment of money in an amount that was higher than the amount deposited in the checking account at the time of check issuance;
 - 3.4 The drawer withdrew money wholly or partially from the checking account, leaving an amount insufficient for payment under the check; or
 - 3.5 The drawer instructed the bank not to honor the check.

If these three prerequisites are not satisfied, then there is no basis for conviction under the Act and any claims filed by the payee will be unsuccessful. To understand the scope and limitations of these prerequisites, what follows are several examples of Supreme Court rulings in which criminal convictions under the Act have been unsuccessful.

- Issuance of the check was for the purpose of a guarantee and not for payment of a direct debt or obligation (Supreme Court Case 988/1970).
- Issuance of the check was for payment of a gambling debt, which is an unenforceable debt under Thai law (Supreme Court Case 2493/1984, 1052/1986).

- Issuance of the check was for payment of a loan unsupported by a loan agreement (Supreme Court Case 862/1969).
- The check was issued without properly dating the check, thereby making a determination of the date of payment uncertain (Supreme Court Case 2039/1980, 1934/1984).

As in the above Supreme Court examples, if the payee is not entitled to pursue a criminal conviction against the drawer due to the failure to satisfy prerequisites under the Act, he or she may still have the right to pursue a civil claim against the drawer.

Civil or Criminal Claims

Once a payee learns that the bank has refused to honor a check, he or she needs to quickly evaluate whether to pursue civil and/or criminal action. This is because the prescription period (statute of limitations) for the lodging of a criminal charge against the drawer of a bad check is three months from the date that the bank first refused to honor the check, regardless of the number of subsequent refusals by the bank. One reason for this short prescription period is that a criminal offense under the Act is compoundable, which provides the payee with the right to withdraw the claim any time before issuance of final judgment. But this also means that the payee must act quickly and prudently in evaluating whether to proceed with a criminal claim, since failure to do so could give rise to criminal charges against the payee for the filing of false charges.

In contrast to criminal claims under the Act, the prescription period for submission of a civil claim against the drawer is one year from the date of check issuance. As supported by Supreme Court precedent, the issuance date for purposes of calculating the prescription period for a civil case is the date that the drawer writes into the check. For example, if the drawer signs the check on August 14, 2010, but fills in a date on the check of August 31, 2010, the issuance date would be August 31, 2010.

Once it has been determined that there is cause to file action against the drawer, the payee must consider whether the best option is to file a civil claim or to initiate a criminal complaint. Submitting a civil claim against the drawer with the appropriate civil court is straightforward and would likely lead to a judgment of civil liability. Unfortunately, a civil claim can take some time and the drawer is unlikely to be motivated to repay the debt quickly. In contrast, there is the potential for more immediate results from filing a criminal complaint.

Filing a Criminal Complaint

When filing a criminal complaint under the Act, the payee has the choice of lodging the charge with a police inquiry officer within the relevant jurisdiction or, in cases where the payee wants more control over the preliminary review, he or she may choose to file the charge directly with the Criminal Court in which jurisdiction lies.

1. In criminal law, who typically prosecutes the defendant?

- A) Private individual
- B) Government
- C) Corporation
- D) Court itself

2. In civil law, what is typically at stake for the defendant?

- A) Loss of liberty
- B) Death penalty
- C) Monetary penalties
- D) Deportation

3. In a criminal case, if the defendant cannot afford an attorney, what happens?

- A) No attorney will be provided
- B) The government provides an attorney
- C) The plaintiff provides an attorney
- D) The court delays the trial

4. What is the burden of proof in a civil case?

- A) Beyond a reasonable doubt
- B) Clear and convincing evidence
- C) Preponderance of the evidence
- D) Absolute certainty

5. What type of injury does civil law primarily address?

- A) Injury to the public
- B) Private injury or wrong
- C) International conflict
- D) Environmental damage

6. What may result from a criminal conviction?

- A) Only monetary penalties
- B) Only public apology
- C) Civil disabilities or loss of liberty
- D) Community service without record

7. In civil law, who initiates the lawsuit?

- A) Government
- B) Plaintiff
- C) Police
- D) Court

8. Which branch of government is responsible for creating laws?

- A) Executive
- B) Legislative
- C) Judicial
- D) Administrative

9. Which branch of government enforces the laws?

- A) Legislative
- B) Judicial
- C) Executive
- D) Electoral

10. Which branch of government interprets laws and ensures they are applied fairly?

- A) Executive
- B) Judicial
- C) Legislative
- D) Regulatory

Background

Mr. Somchai, the owner of "Bangkok Electronics," sells 50 laptops to Mrs. Pim, the owner of an IT services company named "PimTech." In exchange, Mrs. Pim gives Mr. Somchai a cheque for 1 million Thai Baht, post-dated for a month later.

The Incident

A month passes, and when Mr. Somchai attempts to deposit the cheque, it bounces due to insufficient funds in Mrs. Pim's account. Mr. Somchai is frustrated and unsure of what steps to take next.

Your Task

- Discuss the options available to Mr. Somchai. Should he consider this a criminal matter, a civil matter, or both?
- What steps should Mr. Somchai take under each option?
- What are the potential outcomes for both Mr. Somchai and Mrs. Pim under each option?
- As a business owner, what would you do if you were in Mr. Somchai's position?

ANSWER

Mr. Somchai has both criminal and civil options under Thai law regarding Mrs. Pim's bounced cheque.

Criminal Option: Mr. Somchai can pursue criminal charges under the *Act Governing Offenses Arising from the Use of Checks B.E. 2534 (1991)*. To proceed, the cheque must have been issued for an existing debt, and there must be evidence of dishonest intent, such as insufficient funds in Mrs. Pim's account at the time of issuance. He has three months from the date the cheque was dishonored to file a criminal complaint. If successful, Mrs. Pim may face up to one year of imprisonment and/or a fine of up to THB 60,000. Filing criminal charges could pressure Mrs. Pim to settle quickly, but it requires prompt action.

Civil Option: Mr. Somchai can also file a civil lawsuit under the *Thai Civil and Commercial Code* to recover the unpaid amount. He has one year from the cheque's issuance date to pursue civil action. While civil proceedings may take longer, they can lead to a court judgment forcing Mrs. Pim to repay the debt, possibly through the seizure of assets.

Steps:

- For criminal action, Mr. Somchai should file a complaint with the police or court.
- For civil action, he should file a claim in civil court.

Potential Outcomes:

- **Criminal:** Mrs. Pim may face imprisonment, fines, and potentially settle to avoid trial.
- **Civil:** Mr. Somchai could secure a court judgment for the debt, but enforcement could take time.

As a business owner, pursuing both criminal and civil actions simultaneously could maximize the chances of recovery while applying pressure on Mrs. Pim.

RUSSIAN MMA FIGHTER KHUSEIN, TWIN BROTHER ARRESTED FOR KIDNAP, TORTURE, EXTORTION IN PHUKET

PHUKET: Russian MMA fighter Khusein Askhabov and his twin brother Khasan are accused of being involved in a severe crime against an Italian man. The crime, allegedly orchestrated by the Askhabovs, was reportedly executed by three Kazakh individuals who forced their way into the Italian man's villa, bound and assaulted him, and robbed him of valuables worth over 12 million baht. The victim was left bound and gagged after a harrowing ordeal. The accused Russians, known in the MMA community, were subsequently arrested under warrants linking them to robbery and torture charges. The complex case, which intertwines allegations of premeditated crime and violent execution by foreign nationals, has unfolded against the backdrop of existing concerns over illegal activities by Russians in Phuket.

A source close to the Italian man told The Phuket News that the ordeal began when three men entered the Italian man's villa at the well-known resort through a side door and grabbed him while he was still asleep in the bedroom at about 11pm last Sunday night (Sept 3). The three, which the Italian man said he had never seen before, dragged him out of the bedroom then bound, gagged and blindfolded him. His assailants then received a phone call from a person orchestrating the attack, through which the three men asked for information, including the location of a drive containing a ledger of cryptocurrency, which the Italian man denied he had. The first beating began, lasting some 30 minutes, which ended with another phone call to the three attackers, relaying further instructions. The ordeal continued through the night, with the Italian man suffering multiple contusions to his face and body from the beatings. The three men eventually fled the villa, leaving the Italian man bound and gagged. CCTV security footage from the resort showed the Italian man finally making his escape, rolling down a pathway – still bound and gagged but no longer blindfolded – towards the resort's motorbike parking area at 4:48pm the next day (Monday, Sept 4). The three attackers were later identified and confirmed as clearing Immigration at Phuket International Airport at 6:58am last Monday (Sept 4). The three men boarded Flight EK397 from Phuket to Dubai, and are now believed to have returned to Kazakhstan.

Despite the high-profile nature of the incident, local authorities had not publicly acknowledged it until the case gained wider attention following a press conference aimed at reassuring the public of law enforcement's vigilance. The incident has shed light on the significant challenges faced by law enforcement in tourist-heavy regions and the importance of international cooperation in addressing cross-border crime.

- Discuss the options available to the Italian man. Should he consider this a criminal matter, a civil matter, or both?
- Who should the Italian man sue?
- What are the potential outcomes under each option?

****Assignment: Investigating the Influence of Asset Management Firms****

****Objective:****

To explore and understand the profound impact and influence of large asset management firms, particularly BlackRock, on global financial markets, corporate governance, innovation, and broader societal issues.

****Instructions:****

1. **Introduction to Asset Management Firms:**

- What is an asset management firm?
- How do they differ from other financial institutions?
- List the top five asset management firms by assets under management as of 2023.

2. **Deep Dive into BlackRock:**

- Provide a brief history of BlackRock: When was it founded? Who were the founders? How did it grow to its current size?
- What services does BlackRock offer? How does it generate revenue?
- Identify some of the largest funds managed by BlackRock and their investment focus.

3. **Influence on Corporate Governance:**

- How does BlackRock, given its massive assets under management, influence the decision-making processes of companies it invests in?
- Research BlackRock's approach to Environmental, Social, and Governance (ESG) issues. How does it use its influence to push for sustainable business practices?
- Find real-life examples where BlackRock's voting decisions during shareholder meetings influenced corporate policies or strategies.

4. **Innovation and Investment Focus:**

- How does BlackRock drive innovation within the financial industry?
- Investigate BlackRock's stance on emerging technologies like blockchain, AI, and fintech. How are they positioning themselves in these domains?
- How do the investment strategies of BlackRock shape the direction of innovation in various sectors?

5. **Comparative Analysis with Other Asset Managers:**

- Choose two other major asset management firms. Compare and contrast their influence, investment strategies, and approaches to ESG with BlackRock.
- Provide examples of how these firms have influenced major corporate or societal decisions.

6. **Reflection and Analysis:**

- Reflect on the broader implications of the influence wielded by these asset managers. Consider both the positive and potential negative consequences of such influence.
- In your opinion, should there be regulatory checks on the power of these asset management giants? Why or why not?

SUGGESTED ANSWERS

****1. Introduction to Asset Management Firms:****

- Asset management firms manage investments on behalf of clients to achieve specific financial objectives. They allocate client funds across various assets like stocks, bonds, real estate, and other investment opportunities.
- Unlike banks that primarily offer loans and deposit services, asset management firms focus on investing to maximize returns for their clients.
- As of 2023, the top five firms might include BlackRock, Vanguard Group, State Street Global Advisors, Fidelity, and JPMorgan Asset Management (note: this is a hypothetical ranking and might differ in reality).

****2. Deep Dive into BlackRock:****

- BlackRock was founded in 1988 by Larry Fink and others. It grew through a combination of organic growth and strategic acquisitions to become the world's largest asset manager.
- BlackRock offers services including mutual funds, ETF management, alternative investments, and risk management analytics. They generate revenue through management fees, advisory services, and performance fees.
- Some of BlackRock's largest funds focus on broad market indices, sustainable investing, and tech-focused portfolios.

****3. Influence on Corporate Governance:****

- Given its size, BlackRock often holds significant shares in many companies, giving it a notable voice in shareholder meetings. Their decisions can influence company policies, strategies, and board appointments.
- BlackRock has been a proponent of ESG and has pushed companies for transparency and sustainable business practices. They believe that sustainability-integrated portfolios provide better risk-adjusted returns to investors.
- An example could be BlackRock's voting against certain directors at companies that haven't made enough progress on climate risks.

****4. Innovation and Investment Focus:****

- BlackRock has been at the forefront of financial innovation, particularly in the realm of ETFs and risk management software.
- They have shown interest in blockchain for its potential to revolutionize the financial sector and have invested in fintech firms that align with their strategic vision.
- BlackRock's investment decisions can drive growth in sectors they see as promising, such as renewable energy or AI.

****5. Comparative Analysis with Other Asset Managers:****

- Vanguard, for instance, is known for its low-cost index funds and its unique ownership structure. State Street has been influential in promoting gender diversity through its "Fearless Girl" campaign.
- All three firms have emphasized the importance of ESG but might differ in their specific approaches and strategies.

****6. Reflection and Analysis:****

- The influence of asset managers can lead to positive change, like the promotion of sustainable business practices. However, their size and influence could also stifle competition and innovation.
- Some argue for more stringent regulation, fearing that too much power is concentrated in a few hands. Others believe that the market itself will provide the necessary checks and balances.

Case Studies:**1. Flower Shop Failure:**

A opens a flower shop as a sole proprietor in Bangkok. After two years, the business begins to suffer losses and eventually fails. Creditors pursue A for outstanding debts. Which of A's assets can creditors seize to cover the losses?

2. Partner Competition:

B and C run a restaurant as partners in an ordinary partnership. B secretly starts another restaurant nearby without informing C. How can C address B's competing business and what remedies are available? How much time does C have to take action?

3. Shareholder Vote:

F, a shareholder in a private limited company, is concerned about a special resolution to increase the company's capital. How can F participate in the decision-making process, and what requirements must be met for a valid special resolution?

1. James, a shareholder in a private limited company, is worried about a special resolution to merge with another company. How can James participate in the decision-making process, and what requirements must be met for a valid special resolution?

2. Samantha opens a perfume shop as a sole proprietor in Chiang Mai. After two years, the business begins to struggle and eventually fails. Creditors pursue Samantha for unpaid debts. Which of Samantha's assets can creditors seize to recover their money?

3. Lucas and Maria run a coffee shop together in a registered ordinary partnership. Without Lucas's knowledge, Maria secretly starts a competing coffee shop across the street. How can Lucas address Maria's hidden business, and what remedies can Lucas pursue? How much time does Lucas have to take action?

Multiple Choice Questions:

1. Which form of business organization provides the greatest managerial flexibility to the owner?

- A) Private Limited Company
- B) Public Limited Company
- C) Sole Proprietorship
- D) Limited Partnership

2. In an ordinary partnership, which of the following statements is true?

- A) Partners have limited liability for the partnership's debts.
- B) Partners can freely compete with the partnership business.
- C) Partners are jointly and wholly liable for the partnership's obligations.
- D) The partnership is considered a juristic person.

3. What distinguishes a limited partner from a general partner in a limited partnership?

- A) Limited partners can manage the partnership's business operations.
- B) Limited partners have joint and unlimited liability.
- C) Limited partners are personally liable for partnership debts beyond their investment.
- D) Limited partners' liability is limited to their capital contribution.

4. How is liability for debts shared among shareholders in a private limited company?

- A) Jointly and severally among all shareholders.
- B) Limited to the unpaid value of their shares.
- C) Jointly and wholly among all shareholders.
- D) Shared equally regardless of share ownership.

5. What is the primary purpose of forming a public limited company under the Public Limited Company Act?

- A) To avoid corporate taxes.
- B) To offer shares for sale to the public.
- C) To operate as a sole proprietorship.
- D) To limit liability for creditors.

1. Which of the following business forms generally has a single owner who is responsible for all debts and obligations of the business?

- A) Limited Partnership
- B) Private Limited Company
- C) Sole Proprietorship
- D) Public Limited Company

2. In a partnership, how are profits typically shared among partners?

- A) According to the size of their investment
- B) Equally, regardless of the agreement
- C) According to the partnership agreement
- D) Based on the number of partners

3. What is a key feature distinguishing a limited partnership from an ordinary partnership?

- A) Only one partner is needed to form it
- B) Limited partners are not personally liable beyond their investment
- C) Limited partnerships are always juristic entities
- D) All partners have equal management rights

4. What primary advantage do sole proprietorships offer to their owners?

- A) Limited liability
- B) Flexibility and full control of management decisions
- C) Ability to issue shares to the public
- D) Joint financial responsibility with partners

5. Which type of business organization automatically dissolves upon the death of its owner?

- A) Sole Proprietorship
- B) Private Limited Company
- C) Public Limited Company
- D) Limited Partnership

Case Study: SunStone Realty Inc. Debt vs. Equity

SunStone Realty Inc. is a well-established real estate company, recognized for its unique architectural designs and sustainable projects. Over the past decade, it has acquired several smaller realty firms and built a vast portfolio of properties. Their growth was financed primarily through equity and a significant loan from GlobalBank.

****Shareholder Agreement Extract:****

"All issues of new shares must be first offered to existing shareholders proportionally (preemptive right). Any decision to bring external investors requires a 75% approval from existing shareholders."

****Loan Agreement with GlobalBank Extract:****

Clause 8.1: "SunStone Realty Inc. shall maintain a debt-to-equity ratio not exceeding 2:1 at all times."

Clause 8.2: "Any breach of the debt-to-equity ratio will lead to an immediate acceleration of the loan, requiring SunStone Realty Inc. to repay the entire outstanding loan amount within 30 days."

In 2023, seeing the potential for a lucrative expansion, SunStone Realty decided to construct an eco-friendly residential complex. They estimated the cost at \$150 million. To finance this, they planned to issue new shares worth \$50 million. An external investment firm, BrightStar Capital, showed interest in acquiring these shares, promising an additional \$20 million investment in future projects.

Current Financials: Equity: \$200 million; Debt (GlobalBank): \$350 million

****Questions:****

- **Equity vs. Debt:**** Based on the details provided, differentiate between equity and debt in the context of SunStone Realty. Why might the company be considering issuing new shares instead of increasing its debt?
- **Shareholder Agreement:**** Given the extract from the shareholder agreement, what challenges might SunStone Realty face in bringing BrightStar Capital as an external investor?
- **Debt-to-Equity Ratio Analysis:**** If SunStone Realty issues new shares worth \$50 million, will it breach the debt-to-equity ratio clause in its loan agreement with GlobalBank? Show your calculations.
- **Consequences of Breach:**** Given the provided loan agreement clauses, what are the potential consequences if SunStone Realty breaches the debt-to-equity ratio?

ANSWERS

1. **Equity vs. Debt:**

- **Equity** represents ownership in the company. When SunStone Realty issues new shares, they are essentially selling parts of their ownership in the company to raise capital.
- **Debt**, on the other hand, is money borrowed that needs to be repaid with interest. SunStone's current significant debt with GlobalBank is an obligation.
- SunStone might be considering issuing new shares to avoid further debt accumulation, which comes with interest payments and can increase financial risk.

2. **Shareholder Agreement:**

- The shareholder agreement mandates that new shares must first be offered to existing shareholders. This means before BrightStar Capital can be considered, current shareholders have the first right to buy these shares.
- If SunStone wishes to bring in BrightStar Capital without offering shares to current shareholders first, they would need a 75% approval from existing shareholders. Given the high threshold, it might be challenging to gain such widespread approval.

3. **Debt-to-Equity Ratio Analysis:**

- Current Debt-to-Equity Ratio = Debt / Equity = \$350 million / \$200 million = 1.75
- Post-issue Debt-to-Equity Ratio = Debt / (Equity + New Shares) = \$350 million / (\$200 million + \$50 million) = 1.4
- The ratio after the issuance of new shares would be 1.4, which is within the 2:1 limit set by GlobalBank. Thus, issuing the new shares would not breach the debt-to-equity clause.

4. **Consequences of Breach:**

- If SunStone Realty were to breach the debt-to-equity ratio, as per Clause 8.2, the entire outstanding loan amount would become immediately payable within 30 days. This could lead to significant financial strain and potential solvency issues for SunStone.

Question 1: Which of the following is a characteristic of a sole proprietorship in Thai law? A) The business is owned by multiple individuals. B) The owner has limited liability. C) The business has a separate legal entity from the owner. D) The owner has personal and unlimited liability.

Question 2: In the context of Thai law, a partnership that is not registered is known as: A) A Limited Partnership (LP). B) A Registered Ordinary Partnership (ROP). C) An Unregistered Ordinary Partnership (UOP). D) A Sole Proprietorship.

Question 3: What type of partnership in Thai business law involves at least one partner with unlimited liability? A) A Limited Liability Partnership (LLP). B) A Limited Partnership (LP). C) A Sole Proprietorship. D) A Public Limited Company.

Question 4: What is the main advantage of a sole proprietorship? A) Easy access to capital markets. B) Limited liability for the owner. C) Ease of establishment and flexibility. D) Separate legal entity from the owner.

Question 5: Which of the following best describes a Registered Ordinary Partnership (ROP) under Thai law? A) It provides limited liability for all partners. B) It is not required to be registered. C) It is a partnership with a legal entity status. D) All partners have limited and joint liability.

Question 6: In a Limited Partnership (LP) in Thailand, what kind of liability do limited partners have? A) No liability. B) Unlimited liability. C) Liability is limited to the amount they invested in the partnership. D) Liability extends to their personal assets.

Question 7: A sole proprietorship in Thailand: A) Must consist of at least two people. B) Is taxed separately from the individual owner. C) Can raise funds easily by issuing stocks. D) Can be established without complex legal procedures.

Question 8: Which statement is true for unregistered ordinary partnerships in Thailand? A) They must have a minimum of five partners. B) Partners cannot be held personally liable for debts. C) The partnership can sue and be sued in its own name. D) Partners share unlimited and joint liability.

Question 9: In a Registered Ordinary Partnership (ROP) in Thai law, the partnership: A) Cannot enter into contracts. B) Does not provide any limitation of liability for its partners. C) Is taxed at the corporate rate. D) Provides limited liability to all its partners.

Question 10: Which of the following entities is easiest to establish under Thai law? A) Public Limited Company B) Limited Partnership C) Sole Proprietorship D) Registered Ordinary Partnership

Small Cases

Case 1: Mr. A and Mr. B start a business in Thailand and decide not to register their partnership. They take a loan to start the business. The business fails, and they are unable to repay the loan. Who is liable to repay the loan? A) Only Mr. A B) Only Mr. B C) Both Mr. A and Mr. B personally D) None, as the partnership was not registered

Case 2: Ms. C is a limited partner in a Limited Partnership in Thailand. The business incurs debts far exceeding its assets. To what extent is Ms. C liable for the business's debts? A) She is not liable at all. B) She is liable up to the amount of her investment. C) She is liable for the full amount of the debts. D) She is liable only if she participates in management.

Case Study 1: Partnership Disputes and Resolution

Dr. Lee and Dr. Wong are partners in a medical practice in Thailand operating as a Unregistered Ordinary Partnership. They have a verbal agreement on profit sharing, management duties, and business development strategies. After several years, disagreements arise regarding the reinvestment of profits and the direction of the practice. Dr. Wong wants to expand the services, while Dr. Lee prefers to distribute profits as dividends. The dispute escalates, and there is a complete breakdown of communication, leading to operational paralysis.

Discussion Points:

- Identify the legal challenges arising from the lack of a formal partnership agreement.
- Evaluate the mechanisms available under Thai law for dispute resolution in partnerships.
- Propose a framework for partnership agreements that could prevent such disputes.

Case Study 2: Limited Partnership and External Financing

Ms. Somsri, a Thai national, has formed a Limited Partnership with her business partner, Mr. Hiroshi, who is a Japanese investor. Ms. Somsri manages the day-to-day operations of the manufacturing plant they own, while Mr. Hiroshi has provided the majority of the capital and prefers to remain a silent partner. The business is growing, and they are considering taking out a significant bank loan to expand their operations. However, Mr. Hiroshi is concerned about the potential for increased liability.

Discussion Points:

- Assess the impact of the proposed bank loan on both Ms. Somsri's and Mr. Hiroshi's liabilities.
- Analyze the role of Ms. Somsri as a general partner and Mr. Hiroshi as a limited partner, especially in decision-making and liability.
- Discuss the importance of a comprehensive partnership agreement in outlining the terms of finance and liability.

Case Study: Contractual Obligations and Director Authority

Background:

Bangkok Pizza Company Limited (Registered No: 0105560185026) is a well-established pizza chain in Thailand and has two directors Mr. Sukpraset and Mr. Alexandri which have been steering the company's operations smoothly for several years.

Scenario:

In an effort to expand the business, Sukpraset signed a contract with a local produce supplier, Namdhari Thai Fresh Company Limited (Registered No: 0105556099021) and stamp it with the company seal, to provide a steady supply of fresh vegetables for their pizza toppings. The contract was worth 2 million Baht, and Sukpraset signed it solely, without Alexandri 's presence or signature.

Namdhari Thai Fresh Company Limited, after having supplied produce for a month, has not received the due payment from Bangkok Pizza Company Limited. When they reached out to the company, Alexandri informed them that he was unaware of this contract and that it was not valid since it wasn't signed by both directors.

Task:

- Research Thai law and business regulations to determine whether the contract Sukpraset signed is legally binding.
- Does Sukpraset 's signature engage the company's liability, or is he personally liable?
- Would the agreement be binding if Mr Namdhari signs on behalf of Namdhari Thai Fresh Company Limited?
- Does the agreement bind another company, Bangkok Pizza Franchise Co., Ltd. (Registered No. 0105565008360), which has a similar name?
- In light of your findings, what should Namdhari Thai Fresh Company Limited do next?
- Propose preventive measures that could have been implemented to avoid such a situation in the future.

Case Study: Director Authority and Contractual Validity under Thai Law

Background:

Sybarite Company Limited (Registered No: 0125556023220) is a Thai-registered private company established on October 3, 2013, with a registered capital of 18 million Baht. The company operates in the service sector, mainly offering e-commerce-related activities. The company's list of directors includes Mr. Abdeslam Aroussi, Mr. Omar Romero D. Francisco, Mrs./Ms. Narawadee Srikarnjana, and Mr. Albert Seow Sing Woo.

Scenario:

A Bangkok-based marketing firm, Smart Media Solutions Co., Ltd., entered into a service agreement with Sybarite Company Limited to manage an online advertising campaign valued at 1.8 million Baht. The contract was signed by Mr. Omar, who stamped the company seal.

After completion of the marketing campaign, Smart Media Solutions sent an invoice for payment. However, Sybarite Company Limited refused to pay, claiming that the agreement was invalid.

Task:

- Determine whether the contract signed by Mr. Omar is legally binding on Sybarite Company Limited.
- Is Mr. Omar personally liable?

1. What is a sole proprietorship under Thai law?

- A. A company with multiple shareholders
- B. A business owned and operated by one person
- C. A partnership with limited liability
- D. A public limited company

2. In a general partnership, how many partners are required at minimum?

- A. One
- B. Two
- C. Three
- D. Four

3. Which of the following entities has separate legal personality under Thai law?

- A. Sole proprietorship
- B. Unregistered ordinary partnership
- C. Registered partnership
- D. Joint venture

4. Who is liable for debts in a sole proprietorship?

- A. Only the business
- B. The government
- C. The owner, with unlimited liability
- D. The customers

5. A general partnership in Thailand must be registered to:

- A. Pay taxes
- B. Obtain legal personality
- C. Sell goods
- D. Avoid paying debts

6. In a private limited company, shareholders' liability is:

- A. Unlimited
- B. Based on the company's profit
- C. Limited to the amount unpaid on their shares
- D. Equal for all shareholders

7. Which of the following is *not* required to set up a private limited company in Thailand?

- A. At least 3 promoters
- B. A memorandum of association
- C. Public listing on the stock exchange
- D. Company registration with the DBD

8. A partnership must register with which Thai government agency to be legally recognized?

- A. Ministry of Finance
- B. Department of Business Development (DBD)

- C. Board of Investment
- D. Ministry of Labour

9. In a registered partnership, who is liable for the partnership's obligations?

- A. Only the managing partner
- B. The government
- C. All partners, jointly and unlimitedly
- D. Only the partner who signed the contract

10. Which of the following is true about private limited companies in Thailand?

- A. They cannot issue shares
- B. They can have only one shareholder
- C. They require at least three shareholders
- D. They must be registered as partnerships first

Answers:

1. B
2. B
3. C
4. C
5. B
6. C
7. C
8. B
9. C
10. C

Part 1: Case Studies (Short Scenarios)

Read the stories and answer the questions.

Case 1: The New Restaurant Somchai and Anong decide to open a som-tam restaurant together. They put their money together and share the work, but they do **not** register their business with the government.

- **Question:** What is the legal name for Somchai and Anong in this business?
- **Answer:** _____

Case 2: The Car Debt "Sunshine Co., Ltd." is a registered company. The company has a debt of 1 million Baht. The bank wants the **Director** of the company to pay the debt using his personal bank account.

- **Question:** Because the company is a **Juristic Person**, does the Director have to use his personal money to pay the company's debt?
- **Answer:** _____

Case 3: The Big Investor Jane buys 50% of the shares in a tech company. She does not work at the office and she does not sign any contracts. She only waits for the profit at the end of the year.

- **Question:** What is Jane's role in this company?
- **Answer:** _____

Part 2: Multiple Choice Questions (MCQ)

Circle the best answer.

1. Which of these is a "Natural Person"? A) A Private Limited Company B) A first-year university student C) The Ministry of Justice

2. What is the main benefit of "Limited Liability" for a shareholder? A) They can manage the company every day. B) They only risk losing the money they invested in shares. C) They do not have to pay any taxes.

3. In Thailand, how does a group of people create a "Juristic Person"? A) By shaking hands and starting work. B) By registering the business with the government (DBD). C) By printing business cards.

Part 3: Fill in the Blanks

Use these words: **Juristic, Director, Partners**

1. In an ordinary partnership, the people who own and run the business are called _____.
 2. The _____ is the person who has the power to sign documents and manage the company.
 3. A registered company is a _____ person, which means the law treats the company like it has its own "body" separate from the owners.
-

Part 4: Match the Terms

Draw a line to match the word with the correct definition.

| Term | Definition |
|-----------------------|--|
| 1. Shareholder | A. The "brain" or manager who runs the company. |
| 2. Partnership | B. An owner who holds a portion of the company's capital. |
| 3. Director | C. A business where two or more people join together for profit. |

Case Study: The bZx Protocol Hack - When "Code is Law" Meets Actual Law

Introduction

Decentralized Autonomous Organizations (DAOs) represent a new frontier in organizational structure. They operate on blockchain technology, with rules encoded in smart contracts and governance decisions made by a community of token holders. Many proponents believed this decentralized model could operate outside traditional legal frameworks, a concept often summarized as "code is law." However, a major security breach at the bZx protocol put this idea to the test, forcing the legal system to determine who, if anyone, is responsible when things go wrong in a leaderless organization.

Background of the Case

The bZx Protocol was a decentralized finance (DeFi) platform that allowed users to lend and trade cryptocurrencies. Initially, it was controlled by a traditional company, bZeroX LLC, founded by Tom Bean and Kyle Kistner.

In August 2021, the founders transferred control of the protocol to the "bZx DAO." From that point on, decisions about the protocol's maintenance, marketing, and development were to be made by individuals who held the protocol's governance token, BZRX. The more tokens someone held, the more voting power they had. The goal was to create a decentralized platform governed by its user community.

The Incident: A \$55 Million Hack

In November 2021, the bZx protocol suffered a catastrophic hack. It wasn't a sophisticated exploit of the blockchain code itself. Instead, a developer working on the protocol fell victim to a simple phishing email. This allowed a hacker to gain access to the private keys that controlled two of the three blockchains the protocol operated on.

With these keys, the hacker drained approximately \$55 million in various cryptocurrencies from the platform's users. While the DAO eventually approved a compensation plan, it was widely seen as inadequate, with some estimating it would take over a thousand years for users to be fully repaid.

The Lawsuit: Sarcuni v. bZx DAO

A group of users who lost their funds, led by Christian Sarcuni, filed a class-action lawsuit. They didn't just sue the original founders or the developer who was phished. They sued the bZx DAO itself, its founders, and several large venture capital firms that were major token holders and investors in the DAO.

The core of their legal argument was this: since the bZx DAO was a for-profit enterprise that was not registered as any formal legal entity (like a corporation or an LLC), it should be treated by **default** as a **general partnership**.

The Court's Groundbreaking Decision

The defendants tried to have the case dismissed, arguing that a DAO isn't a legal entity that can be sued. However, a U.S. federal court in California disagreed.

The judge ruled that the plaintiffs had presented a plausible argument that the bZx DAO was indeed a general partnership. The reasoning was that it involved an association of two or more "persons" (including individuals and investment firms) carrying on as co-owners of a business for profit. The fact that they never intended to form a partnership was irrelevant; under the law, their actions created one by default.

This decision was a landmark moment. It meant the lawsuit could proceed, and it opened the door to the possibility that every single BZRX token holder who participated in governance could be considered a "partner."

Questions for Discussion:

1. **Default Business Organization:** The plaintiffs argued that the bZx DAO was a "general partnership" by default. What is a general partnership, and why does the law designate it as a default business structure for for-profit ventures that haven't formally incorporated?
2. **Liability of Partners:** If the bZx DAO is legally considered a general partnership, what does this mean for the liability of its individual members (the token holders)? Discuss the concept of "joint and several liability" and how it might apply to both a small, individual token holder and a large venture capital firm involved in the DAO.
3. **Managing Partners and Governance:** In a traditional partnership, there are often "managing partners" who have more control and responsibility. In the context of the bZx DAO, who could be considered the managing partners? Could the actions of major token holders and investors who actively vote on governance proposals elevate their status and potential liability beyond that of passive members?
4. **"Code is Law" vs. Legal Reality:** The philosophy of "code is law" suggests that the rules embedded in a smart contract are the ultimate authority. How does this case challenge that idea? Can a smart contract account for unforeseen events like a phishing attack? Discuss whether DAOs and their participants have legal and ethical duties (like a duty to ensure reasonable security) that exist outside the written code.

Case Study:

XYZ Corporation, a large multinational tech company, wishes to acquire ABC Tech, a small start-up that has developed a highly desirable AI technology. ABC Tech is a juristic person formed under Thai law and has three shareholders who are also the directors of the company.

Draft Contract:

_This contract is made on this day, _____ (Date), between XYZ Corporation, a company incorporated under the laws of _____, having its principal office at _____ (hereinafter referred to as the "Buyer"), and ABC Tech, a company incorporated under the laws of Thailand, having its principal office at _____ (hereinafter referred to as the "Seller").

1. Agreement to Sell and Purchase: Subject to the terms and conditions of this Agreement, the Seller hereby agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, all the issued and outstanding capital stock of the Seller.
2. Purchase Price: The purchase price for the capital stock of the Seller shall be _____ (Amount), payable in cash at closing, subject to adjustments as set forth herein.
3. Closing: The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the principal offices of the Buyer on the date that is no later than _____ days following the execution of this Agreement.
4. Representations and Warranties of the Seller: The Seller represents and warrants to the Buyer that the Seller is a company duly organized, validly existing, and in good standing under the laws of Thailand.
5. Representations and Warranties of the Buyer: The Buyer represents and warrants to the Seller that the Buyer is a company duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation.
6. Confidentiality: The Buyer and the Seller each agree to keep confidential all non-public information obtained from the other party in connection with this Agreement.
7. Indemnification: The Seller will indemnify and hold harmless the Buyer from all losses resulting from any breach of any of the representations and warranties of the Seller contained in this Agreement.
8. Governing Law and Venue: This Agreement shall be governed by and construed under the laws of Thailand. Any legal action or proceeding with respect to this Agreement may be brought in the courts of Thailand.

9. Entire Agreement: This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof.

10. Signatures: This Agreement is signed by the duly authorized representatives of the Buyer and the Seller as of the date first above written.

Signatures

1. One of the shareholders of ABC Tech, who owns 30% of the company, is not keen on the acquisition and has voiced his opposition.
2. XYZ Corporation wants the existing shareholders to sign a non-compete clause, preventing them from starting a similar business for five years after the acquisition. How to incorporate the non-compete clause into the contract and make it binding on all shareholders.
3. There is a dispute over the value of ABC Tech's intellectual property, which significantly affects the purchase price.

Amend this basic contract to address these issues, while ensuring it remains legally sound and enforceable.

ANSWER: Add these parts to the contract

1. Terms of Acquisition: The Purchaser agrees to acquire 100% of the outstanding shares of the Seller subject to the terms and conditions set forth in this Agreement.
2. Non-compete Clause: The Seller, including all its directors and shareholders, agrees not to engage in a similar business within a five-year period from the date of acquisition.
3. Intellectual Property Valuation: The Purchaser and Seller agree to jointly appoint an independent third-party evaluator to assess the value of the Seller's intellectual property. The final purchase price will be adjusted accordingly.

Activity 1: show the corporate structure of Nestle

Activity 2 Case Study: Stellar Media & AdStar Holdings

Background:

Stellar Media is a prominent media company, specializing in publishing a range of magazines and newspapers. They are known for their diverse portfolio of publications reaching a wide range of audiences. AdStar Holdings, on the other hand, is a leading advertising company managing the advertisement space in various media outlets, including those owned by Stellar Media.

AdStar Holdings, as a holding company, was established with the purpose of acquiring and controlling the ownership interests of other companies, including Stellar Media. By doing this, AdStar Holdings aimed to consolidate operations, streamline management, and optimize overall profitability.

Scenario:

Stellar Media, facing financial strain due to market volatility, was struggling with liquidity and operational efficiency. Recognizing the synergy between media publications and advertising, AdStar Holdings decided to acquire a significant ownership interest in Stellar Media, making it a subsidiary.

Post-acquisition, Stellar Media continued its operations independently, focusing on its core competency of publishing, while AdStar Holdings took over the responsibility of managing the advertising space in Stellar Media's publications. This strategic move allowed Stellar Media to focus on content creation without the operational hassles of managing advertising space.

Fictitious Case Elements:

1. ****Stellar Media:**** A reputed publishing company specializing in magazines and newspapers.
2. ****AdStar Holdings:**** A holding company specializing in advertising, with a strategic interest in acquiring companies in the media sector.
3. ****Strategic Acquisition:**** AdStar Holdings acquired Stellar Media to optimize the synergy between publishing and advertising.
4. ****Operational Segregation:**** Post-acquisition, Stellar Media focused on publishing, while AdStar managed the advertising operations in Stellar's publications.

Objective:

To understand the concept and advantages of a holding company through the fictitious scenario of AdStar Holdings and Stellar Media, and to explore how holding companies can control, manage, and optimize the operations of their subsidiaries.

Questions:

1. **Strategic Synergy:**

- How did the acquisition of Stellar Media by AdStar Holdings illustrate the strategic synergy between publishing and advertising in the media sector?

2. **Operational Efficiency:**

- How did AdStar Holdings' control over Stellar Media lead to operational efficiency and allow Stellar Media to focus on its core competency of publishing?

3. **Risk Management:**

- How can holding companies like AdStar Holdings manage and mitigate the operational risks of their subsidiaries, and what benefits does this segregation bring to the entire corporate structure?

4. **Financial Stability:**

- How can the financial stability provided by a holding company impact the overall performance and market competitiveness of its subsidiaries?

5. **Legal Structure and Control:**

- How does the legal structure of holding companies allow them to exert control over their subsidiaries, and what are the implications of this control on the subsidiaries' operations and management?

CASE STUDY

SERVICE AGREEMENTS AND CONTINGENCY FEES IN THAILAND

Background: In Thailand, under Section 150 of the Civil and Commercial Code (CCC), agreements that are contrary to public order or good morals are void. This provision has been interpreted by Thai courts to include contingency fee arrangements in legal services, where lawyers' fees are contingent on the outcome of litigation. This interpretation is grounded in the belief that such agreements might incentivize practices against public order.

Case Scenario: Imagine a small law firm in Thailand that specializes in international business disputes. The firm is considering innovative ways to attract clients, including offering contingency fee arrangements. However, the prevailing legal framework, as interpreted by the Supreme Court, holds that such arrangements may be against public order and therefore void.

Task: You are required to analyze the situation in which the law firm finds itself and propose service agreement structures that could potentially allow the firm to align with Section 150 of the CCC while still providing clients with results-based fees.

Questions for Discussion:

1. Why do you think contingency fee agreements may be considered against public order in Thailand?
2. How could a law firm structure its fees to align with Section 150 of the CCC while still offering performance-based incentives?

Answer:

Suggested Answer:

In Thailand, contingency fee arrangements are viewed as against public order because they could potentially encourage litigation for profit rather than for the pursuit of justice. This perception is rooted in the concern that lawyers might be motivated to take on cases with higher monetary stakes for personal gain, or might engage in unethical behavior to win a case, rather than focusing on the merits and justice of the case.

To align service agreements with Section 150 of the Thai Civil and Commercial Code while still incorporating performance-based incentives, a law firm might consider a hybrid fee structure.

This structure could include a nominal flat fee that covers basic costs and ensures that the client is serious about pursuing the case. On top of this, a modest success fee could be added, which is a percentage of the judgment or settlement amount, provided it is reasonable and does not give the appearance of 'buying into' the litigation.

The Law of Contract

PART 1. Multiple Choice Questions

1. The term “contract” refers to

- A) A binding agreement that always involves two or more parties over the age of twenty.
- B) A binding agreement that always involves two or more parties who are not family members.
- C) A binding agreement between two or more parties to regulate a legal relationship.
- D) A nonbinding agreement between two or more parties to regulate a legal relationship.

Answer:

2. The expression “contractual freedom” means

- A) Freedom to enter into contracts.
- B) Freedom to select the contract type.
- C) Freedom to choose the contracting party.
- D) All of the above.

Answer:

3. A non-reciprocal contract is a contract that

- A) Depends upon another contract.
- B) Creates certain rights or benefits for each party.
- C) Creates only obligations on one party and only rights on the other party.
- D) Is given a special designation under the Civil and Commercial Code.

Answer:

4. Most of the contracts come into existence when

- A) Parties shake their hands.
- B) Parties have signed a written document.
- C) Parties have agreed on the essential provisions.
- D) Parties deliver the property which is the object of the contract.

Answer

5. In order to form a contract, an agreement must include:

- A) An offer and an acceptance.
- B) A transparent commitment of the parties.
- C) A meaningful commitment of the parties.
- D) A written document stating the price of the sale.

Answer:

6. Which of the following is not a basic element of a valid offer?

- A) Intention of the offerer.
- B) Communication of the offer.
- C) Definiteness of the offer.
- D) Morality of the offer.

Answer:

6. An offer will lapse if:

- A) It is made verbally.
- B) It is made in writing.
- C) It is rejected by the offeree.
- D) It is not accepted before the expiration of the period stated in the offer.

Answer:

7. The death of the offerer after the offer has been sent

- A) Does not terminate an offer.
- B) Terminates the offer if, before accepting, the offeree has notice of the death.
- C) Both A and B are correct.
- D) None of the above.

Answer

8. A late acceptance constitutes

- A) A valid acceptance.
- B) A new offer.
- C) Mere silence.
- D) Counteroffer.

Answer:

9. Silence or inaction can amount to acceptance only when it follows

- A) Usage.
- B) Custom.
- C) Course of dealing.
- D) All of the above.

Answer:

10. According to Section 359, paragraph 2, of the Civil and Commercial Code, a counteroffer is deemed to be

- A) A refusal.
- B) A new offer.
- C) An acceptance.
- D) A refusal coupled with a new offer.

Answer:

11. Parties must agree upon all essential elements of a contract. In case of doubt, the contract

- A) Is deemed concluded.
- B) Is deemed not concluded.
- C) It is considered as a preliminary agreement.
- D) It is considered as an invitation to negotiate.

Answer:

12. If a contract contains some stipulations granting benefits for a third party, the latter

- A) Does not have any right.
- B) Has the right to demand performance.
- C) Has the right to demand partial performance.
- D) Has a right to demand performance but cannot enforce the contract.

Answer:

13. According to the Civil and Commercial Code, the contract is terminated

- A) Upon the consent of both parties.
- B) If both parties have performed their obligations completely.
- C) The performance of one party becomes wholly or partly impossible.
- D) All of the above.

Answer:

14. In contracts where both parties commit themselves to render a performance, a contractual party has the right to terminate the contract

- A) In any circumstances.
- B) Only in case the other party is a minor.
- C) Only in case the other party is a quasi-incompetent person.
- D) Only in case the other party does not perform the obligation.

Answer:

15. Supervening impossibility by a cause attributable to the debtor

- A) Never terminates the contract.
- B) Always terminates the contract.
- C) Allows the creditor to terminate the contract.
- D) Allows the creditor to ask performance to the debtor's family.

Answer:

PART 2. Add the missing word

1. A contract is defined as a binding _____ between two or more parties.
2. Thai contract law is based on the principle of contractual _____.
3. Parties are free to regulate their relationship as they want, as long as the contract does not infringe the _____.
4. A contract requires an offer and _____.
5. A valid contract exists only if the acceptance is the _____ image of the offer.
6. An offer must show an objective intention to enter into a contract with the _____.
7. An offer must be _____ to the other party.
8. Definiteness means the terms and conditions must be _____.
9. Before acceptance, the offerer can _____ the offer if the revocation reaches the offeree in time.
10. Silence does not amount to _____.

PART 3. Match the sentences

Match A (1–5) with B (A–E).

A

1. Contractual freedom
2. Offer
3. Acceptance
4. Counter offer
5. Effect on third parties

B

- A) A clear request showing willingness to make a contract
- B) Parties can choose contract type, party, contents, form, and termination terms (within the law)
- C) Agreement to the terms and conditions of the offer (silence is not enough)
- D) Rejection of the original offer plus a new offer with different terms
- E) Generally no effect, except when the contract grants rights to a third party who may demand performance

Part 4. Case study.

Niran emails Somchai on Monday: “I will rent you my condo in Sukhumvit 23 for 20,000 THB/month. Reply by Friday 6:00 pm if you accept.” On Tuesday morning, Niran changes his mind and calls Somchai to revoke the offer. Somchai misses the call and does not hear the voicemail. The email offer remains in Somchai’s inbox. On Friday at 5:30 pm, Somchai replies by email: “I accept.” Niran reads the acceptance at 6:10 pm. Somchai then tells his brother Arun, “You can move in next week—I rented it for you.”

Questions

1. Was Niran’s revocation effective? Explain using the rule on revocation and communication.
2. Did a contract form between Niran and Somchai? Explain using offer, acceptance, and timing.
3. If a valid contract exists, does Arun (Somchai’s brother) have any right to move in or demand performance? Explain using the rule on third-party rights.

Note: If possible, try to use the relevant sections of the Thai Civil and Commercial Code (CCC) to motivate your answers.

HOW TO DRAFT A CONTRACT

A contract creates legal obligations between two or more “parties” (individuals, businesses, institutions, etc.) involved in the contract. Contracts are agreements to exchange something of value (usually goods or services) that are enforceable in court. It is important to include the appropriate information in a contract to protect all parties.

Before you start drafting a contract, focus on the big picture and ask yourself:

- What do I want?
- What does the other party want?
- What are the dangers?

Thinking Before Drafting a Dog Training Contract

Imagine you own a **dog training business** and are preparing to offer services to customers. Before drafting a contract, it is important to take a step back and think about the key factors that will shape the agreement.

Every contract should reflect the needs and expectations of both parties while addressing potential risks. To do this, consider the following questions:

What do I want? As the business owner, what are your goals? What do you need to protect?

What does the other party want? What do customers expect from the training service? What might be their concerns?

What are the dangers? What risks could arise, and how could they create problems for either side?

Dance Lessons Agreement

This Agreement is made at on....., by and between:

A. Co., Ltd., having its address registered at
..... (hereinafter referred to as “ School”), and

B., having his/her address at
..... (hereinafter referred to as “ Student”).

The parties hereto mutually agree as follows:

1. Scope of Work

The School agrees to provide dancing lessons to the Student as follows:

2. Fees

3. Duration

4. Dancing Dress Standard

The Student agrees to comply with the School’s dancing dress standards and dancing conduct guidelines, including:

.....

5. Assignment

The Student is not entitled to assign her/his rights under this Agreement to any other persons, unless there is a written consent from the School.

6. Breach of Agreement & Termination

7. Language

8. Limitation of Liability

9. Applicable law & Jurisdiction/Arbitration

This Agreement is made in duplicate. The parties to the Agreement, having read and understood the entire substance of the Agreement and seeing that it is in compliance with their wishes, hereby sign their names in the presence of witnesses at the aforementioned place and date.

Signed School
()

Signed..... Student
()

Signed Witness
()

Signed..... Witness
()

DRAFT A CONTRACT

Assume your company is in the business of dog training, please draft an agreement between your company and potential customers.

Part 1: Case Studies

Analyze the following scenarios and determine the legal outcome based on the CCC.

Case 1: The Luxury Watch (Sale)

Aiden agrees to buy a limited-edition Swiss watch from Somchai for 50,000 baht via a phone call. They agree that Aiden will pick up the watch and pay the following week. Two days later, Somchai receives a higher offer and sells the watch to someone else, claiming there was no written contract.

- **Question:** Is the verbal agreement between Aiden and Somchai valid and enforceable? Why or why not?

Case 2: The Long-Term Beach Villa (Hire of Property)

Ananya rents a beachfront villa in Hua Hin for a period of 10 years. The agreement is made in writing and signed by both parties, but they never visit the Land Office to register it. After 4 years, the owner asks Ananya to leave, claiming the contract is no longer enforceable.

- **Question:** To what extent is this contract enforceable in court?

Case 3: The Borrowed Laptop (Loan for Use)

Marco borrows a high-end laptop from his friend, Davide, to complete a design project. While Marco is using it, his younger brother accidentally spills coffee on it, ruining the motherboard. Marco argues that since it was a "loan for use" and he didn't pay anything, he isn't liable for the damage.

- **Question:** Is Marco liable for the damage? What standard of care was he required to exercise?

Case 4: The Neighborhood Loan (Loan for Consumption)

Mr. Tan borrows 100,000 baht from his neighbor, Mrs. Lee, at a verbal interest rate of 20% per year. There is no written document, only a "handshake" agreement. Six months later, Mr. Tan refuses to pay back the principal or the interest.

- **Question:** Can Mrs. Lee sue Mr. Tan to recover the 100,000 baht and the 20% interest?

Part 2: Matching

Match the legal term in Column A with its correct description in Column B.

| Column A | Column B |
|-----------------------------|--|
| 1. Fungible Property | A. A public sale completed by the fall of a hammer. |
| 2. Earnest | B. A contract that is only complete upon the delivery of the property. |
| 3. Sale by Auction | C. Property that can be replaced by another of the same kind and quality. |
| 4. Real Contract | D. Something given to bind a contract (common in movable sales \geq 20k baht). |
| 5. Latent Defect | E. A hidden flaw that impairs the value or fitness of a sold good. |

Part 3: Fill in the Blanks

Complete the sentences using the specific rules from the CCC.

1. According to Section 458, ownership of property is transferred to the buyer at the time of _____, unless otherwise agreed.
2. For a sale of immovable property to be valid, it must be made in writing and _____ by the competent official.
3. In a hire of property, the duration for immovable property cannot exceed _____ years.
4. If a lessee remains in possession after the term ends and the lessor does not object, the contract is renewed for an _____ period.
5. The death of the _____ automatically terminates a contract of hire of property.
6. A loan for _____ involves non-consumable property, while a loan for _____ involves property consumed by use.
7. Interest on a loan of money shall not exceed _____% per year.
8. A loan of money exceeding _____ baht must have written evidence signed by the borrower to be enforceable.
9. If no interest rate is specified in a contract but interest is agreed upon, the legal default rate is _____% per year.

Part 4: Multiple Choice Questions (MCQs)

1. **Which of the following is considered "immovable property" requiring registration for sale?**
 - A. A 4-ton motorboat
 - B. A floating house
 - C. A diamond necklace
 - D. A professional laptop
2. **Under Section 462, "delivery" is defined as:**
 - A. Handing over a physical receipt.
 - B. Any action placing property at the disposal of the buyer.
 - C. The moment the buyer pays the full price.
 - D. The registration of the title deed only.
3. **In a "Sale on Approval," when does ownership transfer?**
 - A. When the goods are delivered to the carrier.
 - B. When the buyer takes the property on a trial basis.
 - C. When the buyer accepts/approves the property.
 - D. As soon as the contract is signed.
4. **Which of these is a "minor repair" that a lessee must usually bear?**
 - A. Fixing a collapsed roof.
 - B. Replacing a blown light bulb.
 - C. Repairing a structural foundation crack.
 - D. Replacing a central air conditioning unit.
5. **A "Sale with Right of Redemption" allows the seller to:**
 - A. Cancel the sale if they find a better price.
 - B. Sue the buyer for more money.
 - C. Repurchase the property within a fixed period.
 - D. Keep the property and the money.
6. **If a lessee sublets a property without permission, the lessor has the right to:**
 - A. Increase the rent by 50%.
 - B. Terminate the contract.
 - C. Arrest the sublessee.
 - D. Do nothing (subletting is always allowed).
7. **What happens if a loan of money stipulates an interest rate of 25%?**
 - A. The entire loan contract is void.
 - B. The interest rate is reduced to 15%.
 - C. The borrower does not have to pay any interest or principal.
 - D. The lender is fined, but the rate remains 25%.
8. **A "Loan for Use" is essentially:**
 - A. A paid lease.
 - B. A gratuitous (free) arrangement.
 - C. A transfer of ownership.
 - D. Only for money.
9. **In a hire of immovable property, if the contract is for 5 years but only made in writing (not registered), it is enforceable for:**

- A. 5 years.
- B. 1 year.
- C. 3 years.
- D. Not enforceable at all.

10. The borrower in a "Loan for Consumption" must return:

- A. The exact same physical item borrowed.
- B. Property of the same kind, quality, and quantity.
- C. Only the monetary value of the item.
- D. Nothing; it is a gift.

Case Study 1: Contract of Sale (Unascertained Property & Risk)

The Scenario: On February 1st, **A** (a boutique owner) enters into a verbal agreement with **B** (a textile wholesaler) to purchase 100 meters of premium Thai silk for 50,000 Baht. B has thousands of meters of this silk in his warehouse. They agree that B will measure, cut, and pack the silk on February 5th, and A will pick it up on February 6th.

On February 4th, a freak electrical fire (force majeure) destroys B's entire warehouse, including all the silk. A refuses to pay, claiming she never received the goods. B sues A for the 50,000 Baht, arguing that because the price exceeded 20,000 Baht and they had a "meeting of the minds," the contract was valid.

Questions for Students:

1. Was the ownership of the silk transferred to A at the time of the verbal agreement on February 1st?
2. Can B enforce this contract in court to collect the 50,000 Baht?

Case Study 2: Hire of Property (Subletting & Successors)

The Scenario: **Ladda** (Lessor) rents a commercial building to **Somchai** (Lessee) for a period of 10 years to run a bakery. The contract is made in writing and registered with the Land Department. The contract is silent regarding subletting. Three years into the lease, Somchai sublets the top floor to **Viroj** for a monthly rent of 5,000 Baht.

Suddenly, Ladda passes away. Her heir, **Kitt**, wants to evict both Somchai and Viroj because he wants to sell the land to a developer. Kitt claims that (a) the death of the lessor terminates the lease, and (b) Somchai breached the law by subletting without permission.

Questions for Students:

1. Does Ladda's death terminate the 10-year lease?
2. Can Kitt legally evict Viroj (the sublessee)?

Case Study 3: Loan for Use (Liability & Force Majeure)

The Scenario: **Dr. Arnon** lends his expensive, professional-grade DSLR camera to his colleague, **Dr. Bella**, so she can take photos at her daughter's graduation. There is no payment involved. The agreement is that she will return it in 3 days.

On the second day, Dr. Bella leaves the camera on the seat of her locked car while she enters a pharmacy for 5 minutes. A thief smashes the window and steals the camera. Dr. Bella argues she is not liable because the theft was an "unforeseeable act of a third party" (force majeure) and she took care of it by locking her car.

Questions for Students:

1. What standard of care was Dr. Bella required to exercise under the CCC?
2. Is Dr. Bella liable for the value of the camera?

Case Study 4: Loan for Consumption (Interest & Evidence)

The Scenario: Nid borrows 50,000 Baht in cash from her friend Noi to pay for a medical emergency. They sign a simple note on a napkin that says: *"I, Nid, borrowed 50,000 Baht from Noi and will pay it back in 12 months with 2% monthly interest."* No stamp duty was ever affixed to the napkin.

After 12 months, Nid has paid nothing. Noi sues Nid for the 50,000 Baht principal plus the 24% annual interest (2% x 12 months). Nid's lawyer argues: (a) the napkin is not a formal legal document, (b) the interest rate is illegal, and (c) the lack of stamp duty makes the claim void.

Questions for Students:

1. Is the interest rate of 24% per year enforceable?
2. Can Noi use the napkin as evidence in court despite the lack of stamp duty?

HYPOTHETICAL SCENARIOS WHAT IF QUESTIONS

Before we start:

- The contracting parties: the contract is by and between...?
- Signature: who sign the contract?
- Which page do you sign?
- Do you need a written agreement for this type of contract?
- How do you structure the fees payment?
- How do you set classes: did you consider the possibility that dogs start fighting with each other?
- Did you ask dog owner to provide evidence of vaccines for their dogs?

Then, consider the following scenarios:

1. The customer already paid part of the fees or deposit (depending on the contract the company prepared) but now he/she cannot afford to pay the remaining part. What happens?
2. Because of covid pandemic, the school cannot train dogs anymore. What happens?
3. The client brings a dog to your school that is not vaccinated. What happens?
4. The client brings a dirty dog to your school. What happens?
5. During the training the dog dies. What happens?
6. During the training the dog becomes pregnant. What happens?
7. During the training the dog gets a disease. What happens?
8. During the training the dog gets bitten by another dog. What happens?
9. During the training your dog bites another dog. What happens?
10. During the training your dog bites the instructor. What happens?
11. After the training the dog does not show any improvement. What happens?

Thai Contract Law Worksheet

Topic: Hire of Services vs. Hire of Work

Instructions: Answer the following questions based on the principles of the Thai Civil and Commercial Code.

Part 1: Core Concepts

1. Fill in the blanks:

A "Hire of Services" จ้างแรงงาน contract focuses on the rendering of services under the employer's _____, making it similar to an employment agreement. In contrast, a "Hire of Work" จ้างทำของ contract is an agreement where the main goal is the achievement of a definite _____.

Part 2: Key Differences

2. Complete the Comparison Table:

Fill in the missing characteristics for each type of contract.

| Feature | Hire of Services (Employment) | Hire of Work (Contractor) |
|------------------------------|--|---|
| Main Objective | To provide labor or services over a period of time. | (A) |
| Subordination | (B) | The contractor is independent and not under the direct command of the hirer regarding the method of work. |
| Liability for Defects | The employee is generally not liable for defects if they have exercised reasonable care. | (C) |
| Governing Law | Civil and Commercial Code and the Labour Protection Act. | (D) |

Part 3: Scenario Analysis

3. Multiple Choice:

For each scenario, determine whether it describes a "Hire of Services" or a "Hire of Work".

Scenario A: A software company hires a freelance developer to create a specific mobile application. The contract specifies the final features, a delivery date, and a fixed payment upon completion.

- Hire of Services
- Hire of Work

Scenario B: A hotel hires a person as a full-time receptionist. They must work from 9 AM to 6 PM, wear a uniform, and follow the manager's instructions on greeting guests. They are paid a monthly salary.

- Hire of Services
- Hire of Work

Part 4: Termination & Consequences

4. Identify the Contract Type:

For each legal consequence below, state whether it typically applies to a "Hire of Services" or a "Hire of Work" contract.

1. If the work is delivered late or is defective, the hirer has the right to reduce the remuneration or terminate.
Applies to:
2. Upon termination by the employer without cause, severance pay may be legally required.
Applies to:
3. The contractor is responsible for providing their own tools and equipment to complete the job.
Applies to:
4. Termination requires giving advance notice, often linked to the payment period (e.g., one month's notice if paid monthly).
Applies to:

Part 5: Critical Thinking Scenario

5. You Decide:

A marketing agency engages a graphic designer to create a new logo. The contract states the final deliverable is a complete logo package, due in 30 days for a fixed fee. The designer works from her own home and uses her own computer. However, the agency's art director schedules a mandatory progress review every Monday, providing specific instructions on changes to the font, color, and layout, which the designer must implement.

Is this relationship a Hire of Services or a Hire of Work? Justify your answer by weighing the key factors (objective, subordination, tools, etc.).

Answer Key

1. Fill in the blanks: direction/command, result

2. Comparison Table:

- **(A)** To complete a definite piece of work or achieve a specific, final result.
- **(B)** The employee is subordinate and must follow the employer's commands and work procedures.
- **(C)** The contractor is liable for any defects in the completed work.
- **(D)** Only the Civil and Commercial Code.

3. Scenario Analysis:

- **Scenario A:** Hire of Work (The focus is on the final result—the completed app.)
- **Scenario B:** Hire of Services (The focus is on providing labor under the employer's direction, with fixed hours and subordination.)

4. Termination & Consequences:

1. Hire of Work
2. Hire of Services
3. Hire of Work
4. Hire of Services

5. Critical Thinking Scenario (Model Answer):

This is a complex scenario, but it leans more towards a ****Hire of Services**** disguised as a Hire of Work.

Argument: While the contract specifies a definite result (the logo) which points to a Hire of Work, the key factor is the level of ****subordination****. The art director's mandatory weekly reviews and specific instructions on *how* to do the work (changing fonts, colors, layout) establish a significant degree of command and control. This level of supervision is characteristic of a Hire of Services (employment) relationship, where the employer directs the work process. The fact that the designer uses her own tools is a point in favor of Hire of Work, but the high degree of control from the agency is often the deciding factor in Thai court rulings.

Work on the case study after watching the video:
<https://www.youtube.com/watch?v=hxjtVDyHzsY&t=3s>

Case Study 1: The App-Based Courier Dilemma

Scenario: Somsak is a delivery rider for "BKK-Express," a popular smartphone application. He uses his own motorcycle and wears a uniform provided by the company.

- **Nature of Work:** Somsak logs onto the app whenever he wants. Once he accepts a delivery "gig," he must follow the GPS route provided by the app and deliver the package within 30 minutes. He performs roughly 15 to 20 separate deliveries a day.
- **Payment:** Somsak does not receive a monthly salary. Instead, he receives a fixed "delivery fee" for every successful drop-off. If a package is not delivered or is damaged, he receives nothing for that specific task.
- **Control:** The company does not tell Somsak what time to start his day. However, while he is on a delivery, the company tracks his speed and location via GPS. If he takes a route not suggested by the app, he receives an automated warning.

Using the criteria from the video, analyze Somsak's relationship with BKK-Express. Complete the table and answer the questions below.

1. Criteria Comparison Table

| Legal Criterion | Evidence from Somsak's Case | Classification (Employee or IC?) |
|--|-----------------------------|----------------------------------|
| Nature of Work (Definite work vs. Ongoing) | | |
| Payment Structure (Wages vs. Contractor Fee) | | |
| Control & Supervision (Employer's Orders) | | |

2. Analytical Questions

1. **The "Definite Work" Test:** Does Somsak perform "one definite work" per contract, like the taxi driver example mentioned in the video, or is his service "ongoing" because he works every day for the same app?
2. **The "Control" Factor:** The video states that an independent contractor is **not** subject to the control and supervision of the employer. Does the GPS tracking and the "automated warning" for route deviation constitute legal "control"? Why or why not?
3. **The Successful Completion Rule:** The video explains that a contractor receives a fee only upon "successful completion of the work". How does Somsak's payment for each delivery fit this definition?

4. **Final Verdict:** Based on the Thai Civil and Commercial Code, would you classify Somsak as an **Employee** (*sǎn-yaa jâang raang-nga-an*) or an **Independent Contractor** (*sǎn-yaa jâang tam kǒng*)?

Case Study 2: The Graphic Designer's Dispute

Malee is a talented graphic designer. She was hired by a new fashion brand in Bangkok called *Style-Up* to design their logos and social media posts. Her contract is titled "Freelance Agreement," and it says she is an Independent Contractor.

The Facts: Malee works from the *Style-Up* office every day from 10:00 AM to 4:00 PM. The company gave her a desk and a computer to use. Every morning, the Marketing Manager gives her a list of tasks. Sometimes, even if she is busy with a logo, the Manager orders her to stop and go buy coffee for the office or help move boxes in the warehouse.

Malee is paid 30,000 THB at the end of every month, regardless of how many designs she finishes. After six months, the company tells her they don't need her anymore and asks her to leave immediately. Malee is upset because she thinks she is an Employee and should get one month's salary as "Notice Pay." The company refuses, saying, "You are a freelancer, so we can stop the contract whenever we want."

Questions

1. **The Control Test:** The video says an employee is someone who is under the "**control and supervision**" of the boss. Does the fact that the Manager can order Malee to stop her design work and "buy coffee" or "move boxes" show that Malee is an employee or an independent contractor? Explain why.
2. **The Payment Test:** In the video, the lecturer explains that an Independent Contractor gets a "fee" when a specific job is **successfully completed** (like a taxi reaching a destination). Malee gets 30,000 THB every month even if she doesn't finish a specific design. Does this look more like a **Wage** (*ka-jaang*) or a **Contractor Fee**?
3. **The Final Verdict:** Based on the facts, do you think Malee is an **Employee** (*Hire of Services*) or an **Independent Contractor** (*Hire of Work*)? Give one reason from the video to support your answer.

CASE NOTE

A. DEFENDANTS

Tesco PLC is a leading British multinational retailer, incorporated in England, with global operations and a diverse range of products. After expanding worldwide since the early 1990s, it has become one of the largest multinational retailers, generating an annual revenue of over £50 billion in 2020. It is a prominent player in the UK grocery market, commanding a market share of around 28.4%. Tesco offers various products and services, ranging from groceries, books, electronics, to financial and internet services. Its clothing brand, F&F, is a crucial component of its diversified portfolio. Known for its affordability, the F&F line of clothing is sold in multiple countries, significantly contributing to Tesco's global presence and revenue.

Tesco Stores (Thailand) Limited is a retail company that was an indirect wholly owned subsidiary of Tesco PLC. Being a subsidiary of such a corporate giant, Tesco Stores (Thailand) Limited benefitted from the expansive network, robust resources, and the overall brand reputation associated with its parent company, Tesco PLC. It was a critical part of Tesco's Asian operations, serving as the regional hub for the company's business endeavors in Thailand.

Ek-Chai Distribution System Company Limited, a Thailand-based retail firm, was a direct subsidiary of Tesco Stores (Thailand) Limited from 1998 to 2020. Ek-Chai, operating under the Tesco Lotus brand, was integral to Tesco's regional operations in Thailand, particularly in purchasing clothing for Tesco's F&F line from the V.K. Garments factory. However, in a significant shift in Tesco's global strategy, the company divested several Asian assets, including Tesco Stores (Thailand) Limited and Ek-Chai, in December 2020. This sale to the Charoen Pokphand Group, a Thai conglomerate, for around £8 billion, marked a new chapter for these subsidiaries and significantly changed Tesco's presence in the Asian market.

B. PLAINTIFF

Allegations of worker exploitation have been reported at the VK Garment Factory (VKG) in Mae Sot, Thailand, where F+F jeans for Tesco were manufactured from 2017 to 2020. 130 Burmese workers alleged forced labor conditions with illegal wages, long working hours, and poor living conditions. Workers have brought a unique legal case against Tesco in the UK, accusing it of negligence and unjust enrichment. This case is considered groundbreaking as it is the first of its kind involving a UK company facing litigation over a foreign garment factory in its supply chain that it does not own. Tesco asserts that they would have cut ties with VKG had they known about the severity of the issues. The case reveals deeper labor issues in Mae Sot, where migrant workers are often exploited due to weak law enforcement. In response, Tesco emphasized their commitment to workers' rights and said they'd push for compensation for any unpaid wages, but the situation raises questions about the need for better monitoring and enforcement of labor standards in their supply chain.

C. BACKGROUND

Between 2017 and 2020, Burmese workers in Mae Sot worked at a factory producing F&F clothing for Tesco, under conditions allegedly involving forced labor, imprisonment, and exposure to hazardous working conditions. These situations led to a decline in the workers' physical and mental health. Many workers also experienced dangerous living conditions in accommodations provided by the factory. These Burmese workers were extremely dependent on their employer due to their migrant status, which limited their rights and freedom of movement in Thailand.

In 2017, Tesco carried out an internal ethical assessment of the factory. Despite identifying red flags of modern slavery, including missing work permits and withheld passports for a percentage of migrant workers, the factory was still approved as a Tesco supplier. After the initial audit, Tesco engaged the services of Intertek Thailand to carry out additional social audits of the factory. Intertek Thailand produced audit reports for 2017, 2018, 2019, and 2020, in line with the Ethical Trade Initiative (“ETI”) Base Code, the UN Guiding Principles of Business and Human Rights and local laws. The 2018 and 2019 audits revealed that a substantial number of employees were working significantly more than the 60 hours per week limit stipulated in the ETI Base Code. The 2020 audit reported further instances of modern slavery, including unlawful working hours and underpayment. Despite these alarming findings, Tesco continued to source from the factory until December 2020.

On October 5, 2020, the Burmese workers in Mae Sot and six other workers filed a complaint with the Department of Labour Protection and Welfare (“DLPW”) in Thailand over the factory's failure to pay full wages, among other complaints. The decision from the DLPW, which was based on the flawed Intertek audits, did not grant most of the workers' claims. This decision was appealed to the Thai Labor Court, with another appeal to the Court of Appeal currently in progress as of September 2022, and a decision expected in June 2023.

The Thai Labour Proceedings are narrower in scope than the English proceedings, focusing solely on the factory's failure to pay wages and other benefits, and are against the factory alone. The English proceedings encompass broader issues and involve more parties. Tesco faces a landmark lawsuit in the UK from 130 former workers at VK Garment Factory (VKG), who are suing them for alleged negligence and unjust enrichment. The workers made jeans, denim jackets and other F&F clothes for adults and children for the Thai branch of Tesco’s business between 2017 and 2020.

Contract Law

- 1. Discuss the contractual relationships in the Tesco case.**
- 2. Analyze the implications of contract terms and conditions on the parties involved.**

Sale, Hire of Work, Hire of Services

3. Differentiate between 'sale', 'hire of work', and 'hire of services' in the context of the Tesco case.

Liability Regimes

4. Explore the different liability regimes applicable to Tesco and the garment factory.

Tort Law

5. Apply the principles of tort law to the actions of Tesco and the garment factory.

Agency Law

6. Examine the agency relationship, if any, between Tesco and the garment factory.

Broader Ethical and Legal Implications

7. Discuss the ethical responsibilities of multinational corporations in monitoring their supply chains.

Here are the potential answers to the seven questions under Thai law.

1. Contractual Relationships in the Tesco Case

The contractual relationships in the Tesco case involve multiple layers, particularly between Tesco PLC, its subsidiaries, and the VK Garment Factory (VKG) in Mae Sot. Tesco PLC, as the parent company, indirectly maintained a contractual relationship with VKG through its subsidiary in Thailand. This relationship, while not direct in terms of employment, created obligations related to Tesco's supply chain and labor standards. The court could consider Tesco's knowledge of and control over VKG's labor practices when assessing whether these connections create grounds for liability.

2. Implications of Contract Terms and Conditions on the Parties Involved

Contract terms and conditions in this case are critical in determining responsibilities across Tesco's subsidiaries and the supply chain. While Tesco may argue that it had no direct control over VKG's labor practices, its internal audits and ethical commitments may imply a higher level of responsibility. Thai law does not automatically extend liability from parent companies to subsidiaries without a clear contractual obligation or evidence of control. Nevertheless, Tesco's public statements and policies on labor rights may influence the court's interpretation of its duty to enforce these standards in its supply chain.

3. Differentiation Between 'Sale', 'Hire of Work', and 'Hire of Services'

In the context of this case, the production agreement between Tesco and VKG aligns more with "hire of work" rather than "sale" or "hire of services." "Hire of work" refers to VKG's agreement to produce specific goods (F&F jeans) as instructed by Tesco. This is distinct from "sale," which typically involves the transfer of ownership of existing goods, and "hire of services," which involves providing labor or expertise without producing a specific product. These distinctions are important for determining obligations and assessing any liability for non-compliance with labor standards in the production process.

4. Liability Regimes Applicable to Tesco and the Garment Factory

Liability under Thai law could arise for both Tesco and VKG based on various liability regimes, including tort law and potentially joint liability. Tesco, as a parent company, might face direct or vicarious liability if it is established that it had sufficient knowledge of and control over the operations at VKG. VKG, as the direct employer, is primarily responsible under labor laws for ensuring safe working conditions and lawful treatment of its employees. Tesco's knowledge of VKG's labor violations, as evidenced in audit reports, could contribute to a finding of negligence under Section 420 of the Civil and Commercial Code, should a direct causal link be established.

5. Application of Tort Law Principles

Under Section 420 of the Thai Civil and Commercial Code, tortious liability requires a demonstration of a wrongful act causing harm, either through a willful act or negligence. In this case, allegations of forced labor, unlawful working hours, and non-payment of wages could constitute misconduct by VKG. Tesco's knowledge of these conditions through audits and subsequent inaction could further establish tortious liability on the grounds of negligence or omission. The court might examine whether Tesco's continued sourcing from VKG, despite knowledge of exploitative conditions, indirectly contributed to the harm suffered by the workers.

6. Examination of an Agency Relationship

There is limited precedent under Thai law for recognizing an agency relationship between a parent company and an independent supplier. In this case, Tesco's relationship with VKG does not constitute a formal agency under Thai law, as VKG operated independently. However, if Tesco exercised substantial control or influence over VKG's operations, Thai courts might consider applying the principles of "corporate disregard" or "piercing the corporate veil" to hold Tesco accountable. This approach could potentially establish joint liability if Tesco's control over VKG was extensive enough to disregard their separate corporate identities.

7. Ethical Responsibilities of Multinational Corporations in Monitoring Supply Chains

Multinational corporations like Tesco are increasingly expected to ensure ethical compliance across their supply chains, particularly in regions where labor exploitation risks are high. Tesco's internal audits and commitment to the Ethical Trade Initiative (ETI) Base Code suggest an acknowledgment of this responsibility. Under Thai law, ethical obligations may not create enforceable legal duties. However, if Tesco's commitment to ethical standards is publicly documented, Thai courts may view it as evidence of Tesco's assumed duty of care to oversee labor practices, despite the absence of a statutory requirement for such oversight. This case underscores the importance of vigilant monitoring and the ethical obligation of companies to address human rights issues within their supply chains.

SALE CONTRACT

Case Study 1: “I paid, but the phone wasn’t delivered”

Nok agrees by chat to sell her iPhone to Pat for 18,000 THB. Pat transfers the money immediately. Nok says she will deliver the phone next week. Two days later, the phone is damaged in Nok’s apartment due to an accident. Nok tells Pat: “Too bad, you already bought it—no refund.”

Questions (answer under CCC):

1. Was there a valid contract of sale even though nothing was signed and the phone was not delivered yet? (Hint: definition + no special form for movables.)
2. When did ownership transfer from Nok to Pat (at agreement, at payment, or at delivery)?
3. What are Nok’s main legal obligations after the agreement? List two.
4. If Nok refuses to deliver, what can Pat demand based on the seller’s obligations (deliver + make buyer acquire ownership)?

Case Study 2: “Condo deal by email”

Buyer and Seller exchange emails agreeing on the sale of a condominium in Bangkok for 4,500,000 THB. Buyer pays a 200,000 THB “deposit.” They plan to “sign later,” but never register anything at the Land Office. A month later, Seller changes his mind and sells the condo to someone else.

Questions (answer under CCC):

1. Is an email agreement enough to make a sale of a condo fully enforceable, or is a stricter form required?
2. If the required form/registration was not completed, what is the strongest legal problem Buyer faces in enforcing the transfer?
3. Identify two core obligations of the seller in a sale contract and explain which one is clearly not performed here.
4. Assume Buyer later discovers the condo was already under a third party’s claim (e.g., someone asserts rights over it). Which seller warranty topic is relevant?

Case: Investment in Aroy Café Franchises by Zhang Yimou

Background

SmartCoffee LTD (SCL), a private limited company in Thailand, holds the trademark of Aroy Café. Its shareholders are Aob, Bay, and Carl, and its main business activity is selling franchises. A Chinese investor, Zhang Yimou, is interested in investing in five Aroy café branches under specific terms.

Investment Details

- **Franchise Value:** Each Aroy café branch's franchising value is set at 700,000 THB, which includes 650,000 THB for the franchise and 50,000 THB for securing rental contracts. Value of 5 Aroy branches (inclusive of rental contract): 3,500,000 THB.
- **Investment Plan:** Zhang Yimou proposes to invest in five branches, contributing 65% of their total value, amounting to 2,275,000 THB, in exchange for 65% ownership and profit share from these branches alone.
- **Operational Control:** SmartCoffee LTD retains complete control over business and financial management. Zhang Yimou's role is solely as an investment partner. His liability will not exceed 2,275,000 THB.
- **Financial Reporting and Profit Distribution:** SCL is responsible for monthly financial reporting and distributing 65% of the profits from these branches to Zhang Yimou.
- **Rental Contracts:** All rental agreements for the branches will be between SCL and the landlords.
- **Investment Return and Risks:** There is no guaranteed timeline for the return of Zhang Yimou's initial investment. The investment carries standard financial risks, and past performance of Aroy does not guarantee future success.

Questions for Discussion

1. **Business Organization Form:** Considering Zhang Yimou's investment and the operational control retained by SmartCoffee LTD, what would be the most suitable form of business organization for this investment?
2. What would you suggest if Zhang Yimou does not want to register any form of business organisation at the Department of Business Development (DBD)?
3. **Investor Protection:** How does the chosen business form discussed above under questions 1 and 2 impact his financial risks under Thai law?



IP LAW FOR SME

Quiz on Thai Intellectual Property Law

1. What type of work is protected by Thai copyright law?
 - a. Mathematical formulas
 - b. News headlines
 - c. Literary works
 - d. Official laws
2. Does copyright in Thailand require formal registration?
 - a. Yes
 - b. No
3. How long does copyright last after the author's death?
 - a. 20 years
 - b. 50 years
 - c. 70 years
 - d. 100 years
4. Which of the following is **copyright infringement**?
 - a. Translating a novel without permission
 - b. Quoting a short passage for teaching
 - c. Taking a photo of an old painting in the public domain
 - d. Sharing a newspaper article with friends
5. What is the purpose of **patents**?
 - a. To protect artistic works
 - b. To encourage innovation
 - c. To stop international trade disputes
 - d. To enforce trademark rights
6. What are the **three requirements** for a patent in Thailand?
 - a. Creativity, originality, and novelty
 - b. Novelty, inventiveness, and industrial use
 - c. First-to-use rule
 - d. None of the above
7. How long does a **patent** last in Thailand?
 - a. 10 years
 - b. 15 years
 - c. 20 years
 - d. 25 years
8. Which of these can be patented?
 - a. A machine that runs forever
 - b. A scientific theory
 - c. A chemical with medical use
 - d. An imaginary invention
9. What is the purpose of a **trademark**?
 - a. To prove product quality
 - b. To protect copyrights
 - c. To distinguish brands
 - d. To register patents

10. What is a **service mark** used for?
 - a. Certifying goods
 - b. Identifying services
 - c. Protecting trade secrets
 - d. Selling patents
11. How long does a **trademark** last in Thailand before renewal?
 - a. 5 years
 - b. 10 years
 - c. 15 years
 - d. 20 years
12. Which of the following **cannot be a trademark**?
 - a. A unique personal name
 - b. The Thai national flag
 - c. A new invented word
 - d. A mix of colors
13. What is a **trade secret**?
 - a. A public business idea
 - b. Confidential business information
 - c. A copyrighted book
 - d. A registered trademark
14. What must a trade secret have to be protected?
 - a. Public access
 - b. Commercial value
 - c. Government registration
 - d. A famous brand name
15. What happens if a trade secret is made public?
 - a. It remains protected
 - b. It loses protection
 - c. It turns into a patent
 - d. It becomes a trademark
16. What is an example of **trade secret violation**?
 - a. Reverse engineering a public product
 - b. Sharing company secrets without permission
 - c. Licensing trade secrets legally
 - d. Using a registered trademark

IP in the Knowledge economy

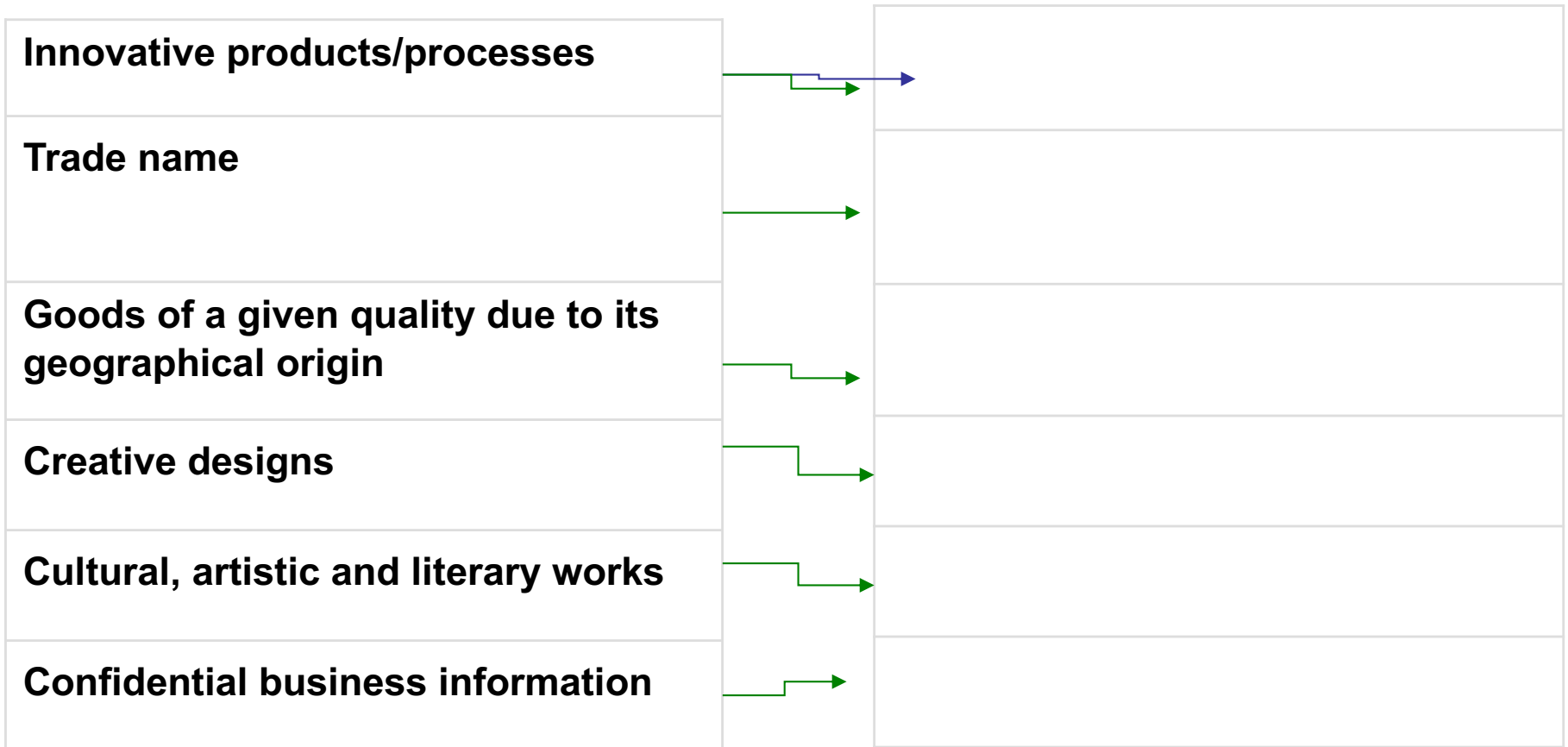
- Invention of AirPods protected by _____
- Brand on AirPods protected by _____
- Design of AirPods protected by _____
- Music played on AirPods protected by _____



Relevance of IP for SMEs

INTANGIBLE ASSETS

IPRs



With Intellectual Property (IP) offers a legal protection and grants exclusive rights to transform intangibles assets into business assets

Relevance of IP for SMEs

Several IPRs in one Product

Copyright – ???

Trademark – ???

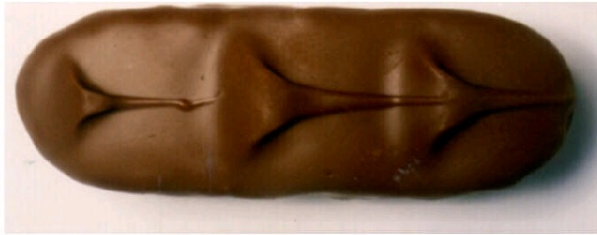


Patent – ???

Design – ?????

Trade secret – ???

How can this be protected?



How can this be protected?

- the roar of a lion?



- the tune of a mobile phone?

- an engine noise?



Porsche 911 (1996)

- the smell of fresh-cut green grass?

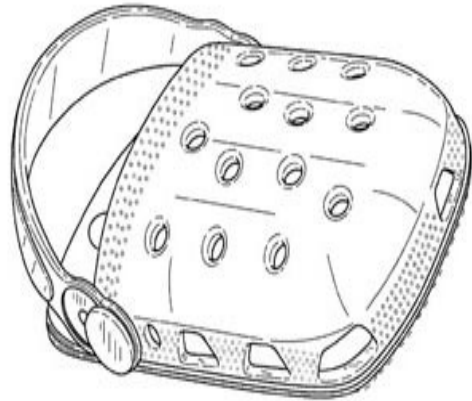
How can this be protected?



Is this infringement?







How can this be protected?

IPOD

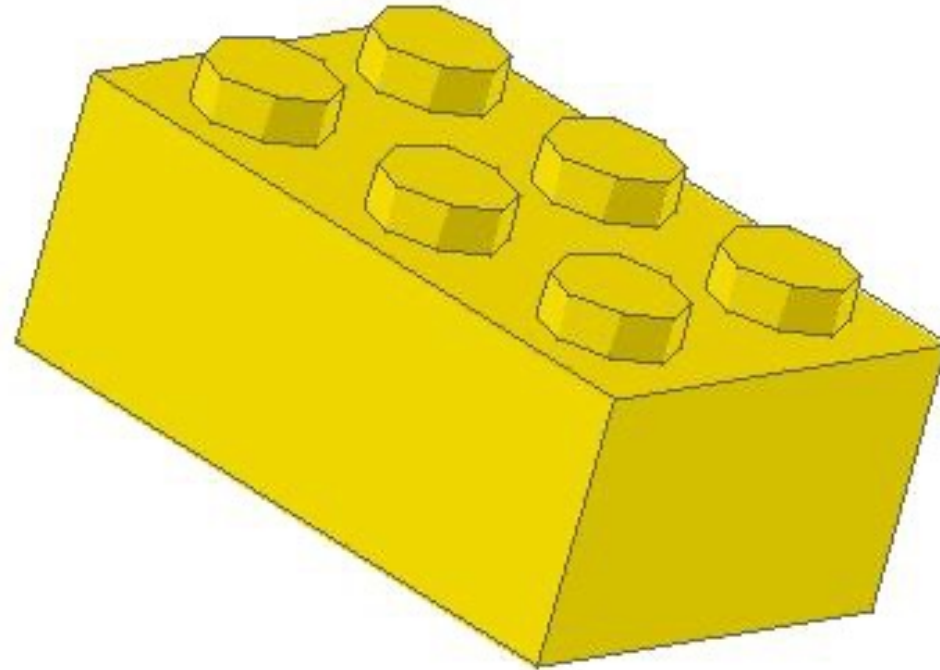


http://en.wikipedia.org/wiki/Image:IPod_Line.png



Industrial designs

Patent is expired....how can you protect it?





MICKEY MOUSE



DONALD DUCK

Copyright is expired....how can you protect it?

Trademark Hunt with USPTO Database

Objective: This activity is designed to help you familiarize yourselves with the United States Patent and Trademark Office (USPTO) database. You'll learn how to search for trademarks, understand their classifications, and interpret their status. This is a crucial skill in IP law, as it allows you to determine the availability of a potential trademark for registration.

Instructions:

1. **Introduction to USPTO Database and TESS**

Navigate to the USPTO's Trademark Electronic Search System (TESS) at <http://tmsearch.uspto.gov>. This system allows you to search for registered trademarks and prior pending applications.

2. **Learn About Trademark Basics**

Before starting the search, you should understand some key concepts: what trademarks are, what their statuses mean (live/dead), and what the different classes represent. This information can be found in the USPTO's Trademark Basics page.

3. **Trademark Search**

Once you're familiar with the basics, it's time to start searching. You should look for trademarks in specific categories or industries, or perhaps even well-known trademarks from major companies. The goal is to find as many live trademarks as possible that fit the assigned category or description.

4. **Trademark Analysis**

After finding a trademark, study its detailed status and documentation. Look at the mark's first use in commerce, owner, representation, and more. This step is critical to understanding the trademark's history and current status.

5. **Trademark Classification**

Trademarks are grouped into 45 different classes based on the type of product or service they represent. Classify the trademarks you've found. This will help you understand the wide range of areas where trademarks apply.

6. **Friendly Competition (Optional)**

- Who can find the oldest live trademark?

- Who can find the most interesting or unusual trademark?

Patent Exploration with USPTO Database

Objective: This activity is designed to make you aware of the vast number of patents involved in everyday items - specifically, your smartphones or tablets. By exploring the United States Patent and Trademark Office (USPTO) database, you will learn how to search for patents, read and interpret patent documents, and understand their applications.

Instructions:

Introduction to USPTO Database and PatFT

Navigate to the USPTO's Patent Full-Text and Image Database (PatFT) at <http://patft.uspto.gov>. This database allows you to search for U.S. patents.

Identify Potential Patents

Look at your phone or tablet and identify different components or features that might be patented. For example, the technology that enables touch screen functionality, the design of the device, a unique feature of the operating system, etc.

Patent Search

Once you've identified potential patented components or features, use PatFT to search for relevant patents. Make use of different search terms related to the component or feature you're investigating.

Patent Analysis

When you find a patent, read through it carefully. Pay special attention to the abstract, the list of claims, the description, and the drawings. Try to understand what the invention is, what problem it's solving, and how it works.

ChatGPT or Bard Trademark Creation

Objective: The purpose of this activity is to get creative with AI and understand how AI can be used in generating unique names, slogans, or logos for hypothetical businesses. You'll then search these creations in the USPTO database to see if they are unique and meet the legal requirements for trademark protection.

Instructions:

1. ****Brainstorming Business Ideas****

Start by brainstorming ideas for hypothetical businesses. This could be anything from a technology startup to a local bakery. Think of a brief description for each business.

2. ****Trademark Generation****

Use ChatGPT or Bard to generate unique names, slogans, or logos for your hypothetical businesses. Feed the AI your business descriptions and see what creative outputs it comes up with.

3. ****Trademark Search****

Once you have a list of potential trademarks, navigate to the USPTO's TESS and check if your generated names, slogans, or logos are already in use.

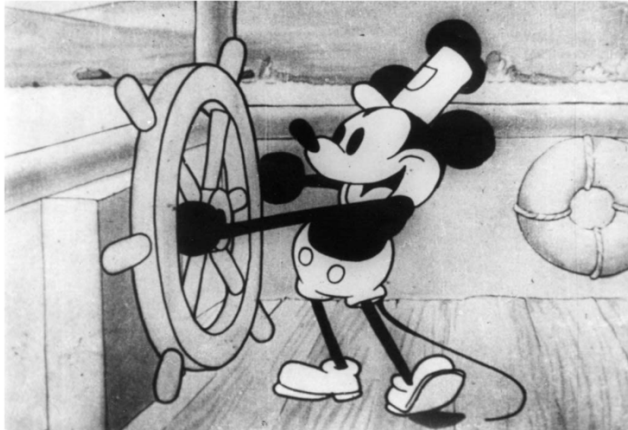
4. ****Trademark Analysis****

If your generated trademarks are unique, consider whether they meet the legal requirements for trademark protection. Are they distinctive? Are they descriptive, suggestive, arbitrary, or fanciful? Reflect on the likelihood of them being accepted as registered trademarks.

5. ****Reflection****

Reflect on this activity by noting down what you've learned about the process of creating and searching for trademarks. What were the challenges? What did you find interesting? How effective was AI in generating unique and viable trademarks?

Mickey Mouse Steamboat Willie is a 1928 animated short film directed by Walt Disney (1901- 1966) and Ub Iwerks (1901- 1971). Based on the business law studies, when will Mickey Mouse (version Steamboat Willie here below) enter the public domain?



Name:

Answer:

EXAMINATION S1.1 INSTRUCTIONS

Course: Business Law **Duration:** 1h 50 min **Hours** **Format:** Closed Book **Rules:** This is a closed-book examination; no notes are permitted. The use or possession of any electronic devices, including mobile phones and wearable technology (e.g., smartwatches), is strictly prohibited. Please ensure all devices are stored in your bag. Finding a device on your person will automatically result in F grade even if not in use.

NAME &
NUMBER _____

The Street Food Venture: Somchai and Wichai decided to start a food stall business called "Bangkok Bites" together. They both contributed equal amounts of money to buy a cart and ingredients and agreed to share the profits equally.

To expand their reach, they contacted a neighbor to buy a second-hand motorbike. They verbally agreed on a price of 25,000 THB. They shook hands on the deal to confirm the sale, but no deposit was paid, and no documents were signed. Later, the neighbor refused to hand over the bike. One day, while pushing the food cart to a new location, Somchai was distracted looking at his phone and accidentally crashed into a parked luxury car, scratching the paint. The car owner, Mr. Tan, is demanding 50,000 THB for repairs.

Separately, "Bangkok Bites" has become famous for a specific chili sauce. Somchai and Wichai wrote down the complex mixture of ingredients on a piece of paper and keep it locked in a safe. They never told anyone the recipe. A competitor is trying to bribe their former assistant to get a photo of that paper.

Questions: 1 Somchai and Wichai are operating the business based on the agreement described above. Analyze the legal status of "Bangkok Bites." Identify the specific type of business organization formed by the two friends based on their actions.

Question 2.1 Focus on the verbal agreement to buy the motorbike for 25,000 THB. Identify the type of contract involved. **2.2** Focus on the incident with Mr. Tan: what are the legal consequences of the incident for Somchai, Wichai, and the "Bangkok Bites" business entity? Explain the reasoning for each party.

Question 3.1 Analyze the legal status of the name 'Bangkok Bites' as used in their current operations. What rights, if any, arise from its use, and how could stronger protection be obtained?

3.2 Identify the most appropriate legal regime to protect this recipe. Explain the main requirements that must be met for this protection to be valid.